SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

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LEGAL NOTICE NO. 28 OF 2023

EUROPEAN UNION (WITHDRAWAL) ACT 2019

FINANCIAL SERVICES ACT 2019

CENTRAL SECURITIES DEPOSITORIES (AMENDMENT) (EU EXIT) REGULATIONS 2023

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In exercise of the powers conferred on the Minister by section 11 of the European Union (Withdrawal) Act 2019 and sections 626 and 627 of the Financial Services Act 2019, the Minister has made these Regulations-

Title.

1. These Regulations may be cited as the Central Securities Depositories (Amendment) (EU Exit) Regulations 2023.

Commencement.

2. These Regulations come into operation on the day of publication.

Amendment of the CSD Regulation.

3.(1) The CSD Regulation is amended in accordance with regulations 4 to 11..

(2) In these Regulations, the "CSD Regulation" means Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012, as it forms part of the law of Gibraltar.

Subject matter and scope.

4. In Article 1–

(a) in paragraph 1–

(i) omit "uniform";

(ii) for "the Union" substitute "Gibraltar";

(b) omit paragraph 3;

(c) in paragraph 4, for "competent authorities or relevant authorities or to comply with their orders under this Regulation, do not apply to the members of the ESCB, other Member States' national bodies performing similar functions, or to other public

bodies charged with or intervening in the management of public debt in the Union in relation to any CSD which the aforementioned bodies" substitute "the competent authority or to comply with its orders under this Regulation, do not apply to the central bank or any other public bodies charged with or intervening in the management of public debt in Gibraltar in relation to any CSD which they".

Definitions.

5.(1) Article 2 is amended as follows.

(2) In paragraph 1–

(a) in point (1), after "legal person" insert "established in Gibraltar";

(b) in point (3), after "CSD" insert "or third-country CSD";

(c) in point (5), after "another CSD" insert "or third-country CSD";

(d) for point (6) substitute–

"(6) 'requesting CSD' means the CSD or third-country CSD which requests access to the services of a CSD through a CSD link;";

(e) for points (8) to (10) substitute–

"(8) 'financial instruments' or 'securities' means financial instruments as specified in paragraph 46 of Schedule 2 to the Financial Services Act 2019;

(9) 'transfer order' means a transfer order within the meaning of regulation 2(1) of the Financial Services (Financial Markets and Insolvency: Settlement Finality) Regulations 2020;

(10) 'securities settlement system' means a system in relation to which a designation order made under regulation 5 of the Financial Services (Financial Markets and Insolvency: Settlement Finality) Regulations 2020 is in force that is not operated by a central counterparty whose activity consists of the execution of transfer orders;

(10A) 'SSS' means a securities settlement system or a similar service operated by a CSD or third-country CSD;";

(f) in point (11) omit ", including one authorised in accordance with Directive 2013/36/EU or with Directive 2014/65/EU,";

(g) for point (14) substitute–

“(14) ‘business day’ covers both day and night-time settlements and encompasses all events happening during the business cycle of a securities settlement system;”;

(h) for point (17) substitute–

“(17) ‘competent authority’ means the Gibraltar Financial Services Commission;”;

(i) omit point (18);

(j) for point (19) substitute–

“(19) ‘participant’ means any participant as defined in regulation 2(1) of the Financial Services (Financial Markets and Insolvency: Settlement Finality) Regulations 2020;”;

(k) for points (21) and (22) substitute–

“(21) ‘control’ means the relationship between two undertakings as described in Part 7 of the Companies Act 2014;

(22) ‘subsidiary’ means a subsidiary undertaking within the meaning of Part 7 of the Companies Act 2014;”;

(l) omit points (23) and (24);

(m) for point (25) substitute–

“(25) ‘branch’ means a place of business in Gibraltar other than a head office which is a part of a CSD or third-country CSD which has no legal personality and which provides CSD services for which the CSD has been authorised or the third-country CSD has been recognised;”;

(n) for point (26) substitute–

“(26) ‘default’ in relation to a participant means a situation where insolvency proceedings within the meaning of regulation 2(1) of the Financial Services (Financial Markets and Insolvency: Settlement Finality) Regulations 2020 are opened against that participant;”;

(o) for points (29) to (33) substitute–

“(29) ‘CSD link’:

(a) means:

(i) an arrangement between CSDs or third-country CSDs whereby a CSD or third-country CSD becomes a participant in the SSS of a CSD or third-country CSD in order to facilitate the transfer of securities from the participants of the latter CSD or third-country CSD to the participants of the former CSD or third-country CSD; or

(ii) an arrangement whereby a CSD or third-country CSD accesses a CSD or third-country CSD indirectly via an intermediary; and

(b) includes standard links, customised links, indirect links, and interoperable links;

(30) 'standard link' means a CSD link whereby a CSD or third-country CSD becomes a participant in the SSS of a CSD or third-country CSD under the same terms and conditions as applicable to any other participant in the SSS operated by the latter;

(31) 'customised link' means a CSD link whereby a CSD or third-country CSD that becomes a participant in the SSS of a CSD or third-country CSD is provided with additional specific services to the services normally provided by that CSD or third-country CSD to participants in the SSS;

(32) 'indirect link' means an arrangement between a CSD or third-country CSD and a third party other than a CSD or third-country CSD, that is a participant in the SSS of a CSD or third-country CSD. Such a link is set up by a CSD or third-country CSD in order to facilitate the transfer of securities to its participants from the participants of another CSD or third-country CSD;

(33) 'interoperable link' means a CSD link whereby CSDs or third-country CSDs agree to establish mutual technical solutions for settlement in the SSS that they operate;";

(p) for point (35) substitute–

"(35) 'transferable securities' has the meaning in Article 2.1(24) of Regulation EU (No) 600/2014/EU;";

(q) omit point (36);

(r) for points (37) to (43) substitute–

"(37) 'money-market instruments' has the meaning in Article 2.1(25A) of Regulation (EU) No 600/2014;

(38) 'units in collective investment undertakings' means units in collective investment undertakings as referred to in paragraph 46(3) of Schedule 2 to the Financial Services Act 2019;

(39) ‘emission allowance’ has the meaning in paragraph 46(11) of Schedule 2 to the Financial Services Act 2019;

(40) ‘regulated market’ has the meaning in Article 2.1(13) of Regulation (EU) No 600/2014;

(41) ‘multilateral trading facility’ or ‘MTF’ has the meaning in Article 2.1(14) of Regulation (EU) No 600/2014;

(42) ‘trading venue’ has the meaning in Article 2.1(16) of Regulation (EU) No 600/2014;

(42A) ‘Gibraltar trading venue’ has the meaning in Article 2(16)(a) of Regulation (EU) No 600/2014;

(43) ‘settlement agent’ means settlement agent as defined in regulation 2(1) of the Financial Services (Financial Markets and Insolvency: Settlement Finality) Regulations 2020;”;

(s) omit point (44);

(t) in point (45)–

(i) in the three places it appears, for “national law” substitute “the law of Gibraltar” each time it occurs;

(ii) omit “the applicable”;

(u) after point (46), insert–

“(47) references to the “central bank”, in relation to Gibraltar, are to be read as references to the Ministry of Finance;

(48) the “data protection legislation” has the meaning in the Data Protection Act 2004;

(49) “financial collateral arrangement” means a financial collateral arrangement as defined in section 2(1) of the Financial Collateral Arrangements Act 2004;

(50) references to “the law of Gibraltar on markets in financial instruments” are to the law of Gibraltar which was relied on immediately before IP completion day to implement Directive 2014/65/EU and its implementing measures, as amended from time to time;

(51) “Minister” means the Minister with responsibility for financial services;

(52) “Part 7 permission” means permission given under Part 7 of the Financial Services Act 2019;

(53) references to a “third country” (including in expressions including the words “third country”) are to be read as references to a country or territory other than Gibraltar.”.

(3) In paragraph 2, for “The Commission shall be empowered to adopt delegated acts in accordance with Article 67 concerning measures to” substitute “The Minister may by regulations”.

Amendment of Title II.

6.(1) In Article 3–

(a) in paragraph 1, for “the Union” substitute “Gibraltar”;

(b) in paragraph 2–

(i) for “trading venue” substitute “Gibraltar trading venue”;

(ii) in both places it appears, after “CSD” insert “or third-country CSD”;

(iii) for “point (a) of Article 2(1) of Directive 2002/47/EC” substitute “section 2(1) of the Financial Collateral Arrangements Act 2004”.

(2) In Article 4–

(a) omit paragraph 1;

(b) for paragraphs 2 and 3 substitute–

“2. The competent authority shall ensure that the first sub-paragraph of Article 3(2) of this Regulation is applied where transferable securities are admitted to trading or traded on Gibraltar trading venues.

3. The competent authority shall ensure that the second sub-paragraph of Article 3(2) of this Regulation is applied where transferable securities admitted to trading or traded on Gibraltar trading venues are transferred following a financial collateral arrangement.”.

(3) In Article 5–

(a) in paragraph 2–

(i) for “trading venues” substitute “Gibraltar trading venues”;

(ii) in both places it appears, for "trading venue" substitute "Gibraltar trading venue";

(b) for paragraph 3 substitute–

"3. The competent authority shall ensure that paragraphs 1 and 2 are applied.".

(4) For Article 6, substitute–

"*Article 6*
Measures to prevent settlement fails

1. Gibraltar trading venues must establish procedures that enable the confirmation of relevant details of transactions in financial instruments referred to in Article 5(1) on the date when the transaction has been executed.

2. Despite paragraph 1, investment firms must, where applicable, take measures to limit the number of settlement fails.

Those measures must at least consist of arrangements between the investment firm and its professional clients as referred to in Schedule 1 to the Financial Services Investment Services) Regulations 2020 to ensure the prompt communication of an allocation of securities to the transaction, confirmation of that allocation and confirmation of the acceptance or rejection of terms in good time before the intended settlement date.

The competent authority may issue guidance on the standardised procedures and messaging protocols to be used for complying with the second sub-paragraph.

3. For each securities settlement system it operates, a CSD must establish procedures that facilitate the settlement of transactions in financial instruments referred to in Article 5(1) on the intended settlement date with a minimum exposure of its participants to counterparty and liquidity risks and a low rate of settlement fails. It must promote early settlement on the intended settlement date through appropriate mechanisms.

4. For each securities settlement system it operates, a CSD must put in place measures to encourage and incentivise the timely settlement of transactions by its participants. CSDs must require participants to settle their transactions on the intended settlement date.

5. The Minister may make technical standards to specify–

(a) the measures to be taken by investment firms in accordance with the first sub-paragraph of paragraph 2;

(b) the details of the procedures facilitating settlement referred to in paragraph 3; and

(c) the details of the measures to encourage and incentivise timely settlement referred to in paragraph 4.”.

(5) For Article 7, substitute–

“*Article 7*
Measures to address settlement fails

1. For each securities settlement system it operates, a CSD must establish a system that monitors settlement fails of transactions in financial instruments referred to in Article 5(1). It must provide regular reports to the competent authority as to the number and details of settlement fails and any other relevant information, including the measures envisaged by CSDs and their participants to improve settlement efficiency. Those reports must be made public by CSDs in an aggregated and anonymised form on an annual basis.

2. For each securities settlement system it operates, a CSD must establish procedures that facilitate settlement of transactions in financial instruments referred to in Article 5(1) that are not settled on the intended settlement date. These procedures must provide for a penalty mechanism which will serve as an effective deterrent for participants that cause settlement fails.

Before establishing the procedures referred to in the first subparagraph, a CSD must consult the relevant trading venues and CCPs in respect of which it provides settlement services.

The penalty mechanism referred to in the first sub-paragraph must include cash penalties for participants that cause settlement fails (“failing participants”). Cash penalties must be calculated on a daily basis for each business day that a transaction fails to be settled after its intended settlement date until the end of a buy-in process referred to in paragraph 3, but no longer than the actual settlement day. The cash penalties must not be configured as a revenue source for the CSD.

3. Without limiting the penalty mechanism referred to in paragraph 2 and the right to bilaterally cancel the transaction, where a failing participant does not deliver the financial instruments referred to in Article 5(1) to the receiving participant within four business days after the intended settlement date (“extension period”) a buy-in process must be initiated by which those instruments are available for settlement and delivered to the receiving participant within an appropriate time-frame.

Where the transaction relates to a financial instrument traded on an SME growth market the extension period is 15 days unless the SME growth market decides to apply a shorter period.

4. The following exemptions from the requirement referred to in paragraph 3 apply:

(a) based on asset type and liquidity of the financial instruments concerned, the extension period may be increased from four business days up to a

maximum of seven business days where a shorter extension period would affect the smooth and orderly functioning of the financial markets concerned;

(b) for operations composed of several transactions including securities repurchase or lending agreements, the buy-in process referred to in paragraph 3 does not apply where the timeframe of those operations is sufficiently short and renders the buy-in process ineffective.

5. Without limiting paragraph 7, the exemptions in paragraph 4 do not apply in relation to transactions for shares where those transactions are cleared by a CCP.

6. Without limiting the penalty mechanism referred to in paragraph 2, where the price of the shares agreed at the time of the trade is higher than the price paid for the execution of the buy-in, the corresponding difference must be paid to the receiving participant by the failing participant no later than on the second business day after the financial instruments have been delivered following the buy-in.

7. If the buy-in fails or is not possible, the receiving participant can choose to be paid cash compensation or to defer the execution of the buy-in to an appropriate later date ("deferral period"). If the relevant financial instruments are not delivered to the receiving participant at the end of the deferral period, cash compensation must be paid.

Cash compensation must be paid to the receiving participant no later than on the second business day after the end of either the buy-in process referred to in paragraph 3 or the deferral period, where the deferral period was chosen.

8. The failing participant must reimburse the entity that executes the buy-in for all amounts paid in accordance with paragraphs 3, 4 and 5, including any execution fees resulting from the buy-in. Such fees must be clearly disclosed to the participants.

9. CSDs, CCPs and trading venues must establish procedures that enable them:

(a) to suspend, in consultation with the competent authority, any participant that fails consistently and systematically to deliver the financial instruments referred to in Article 5(1) on the intended settlement date; and

(b) to disclose to the public the identity of any suspended participant, but only after:

(i) the participant has had the opportunity to submit its observations on the proposed disclosure; and

(ii) the competent authority has been informed of the proposed disclosure.

In addition to consulting the competent authority before any suspension, CSDs, CCPs and trading venues must notify the competent authority without delay when a participant is suspended.

Public disclosure of suspensions must not contain personal data within the meaning of the data protection legislation.

10. Paragraphs 2 to 9 apply to all transactions of the financial instruments referred to in Article 5(1) which are admitted to trading or traded on a trading venue or cleared by a CCP as follows:

(a) for transactions cleared by a CCP, the CCP must be the entity that executes the buy-in according to paragraphs 3 to 8;

(b) for transactions not cleared by a CCP but executed on a trading venue, the trading venue must include in its internal rules an obligation for its members and its participants to apply the measures referred to in paragraphs 3 to 8;

(c) for all transactions other than those in points (a) and (b), CSDs must include in their internal rules an obligation for their participants to be subject to the measures referred to in paragraphs 3 to 8.

A CSD must provide the necessary settlement information to CCPs and trading venues to enable them to fulfil their obligations under this paragraph.

Without limiting points (a), (b) and (c) of the first sub-paragraph, CSDs may monitor the execution of buy-ins referred to in those points with respect to multiple settlement instructions, on the same financial instruments and with the same date of expiry of the execution period, with the aim of minimising the number of buy-ins to be executed and thus the impact on the prices of the relevant financial instruments.

11. Paragraphs 2 to 9 do not apply to failing participants which are CCPs.

12. Paragraphs 2 to 9 do not apply if insolvency proceedings are opened against the failing participant.

13. This Article does not apply where the principal venue for the trading of shares is located in a third country. The location of the principal venue for the trading of shares is to be determined in accordance with Article 16 of Regulation (EU) No 236/2012.

14. The Minister may by regulations specify parameters for the calculation of the cash penalties referred to in paragraph 2 at levels which are proportionate, based on asset type and liquidity of the financial instrument and type of transaction, and ensure a high degree of settlement discipline and the smooth and orderly functioning of the financial markets concerned.

15. The Minister may make technical standards to specify:

(a) the details of the system monitoring settlement fails and the reports on settlement fails referred to in paragraph 1;

(b) the processes for collection and redistribution of cash penalties and any other possible proceeds from such penalties in accordance with paragraph 2;

(c) the details of operation of the appropriate buy-in process referred to in paragraphs 3 to 8, including appropriate time-frames to deliver the financial instrument following the buy-in process referred to in paragraph 3. Such time-frames must be calibrated taking into account the asset type and liquidity of the financial instruments;

(d) the circumstances under which the extension period may be prolonged according to asset type and liquidity of the financial instruments, in accordance with the conditions referred to in paragraph 4(a) taking into account the criteria for assessing liquidity under Article 2.1(17) of Regulation (EU) No 600/2014;

(e) the type of operations and their specific time-frames referred to in paragraph 4(b) that renders buy-in ineffective;

(f) a methodology for the calculation of the cash compensation referred to in paragraph 7;

(g) the conditions under which a participant is to be treated as having consistently and systematically failed to deliver the financial instruments as referred to in paragraph 9; and

(h) the necessary settlement information referred to in the second sub-paragraph of paragraph 10.”.

(6) For Article 8, substitute–

“Article 8

Enforcement

1. The competent authority is competent for ensuring that Articles 6 and 7 are applied by the institutions subject to its supervision and for monitoring the penalties imposed.

2. An infringement of the rules under this Title does not affect the validity of a private contract on financial instruments or the possibility for the parties to enforce the provisions of a private contract on financial instruments.”.

(7) In Article 9–

(a) in paragraph 1–

(i) in the first sub-paragraph, for “competent authorities of their place of establishment” substitute “competent authority”;

(ii) omit the second sub-paragraph;

(b) for paragraph 2 substitute–

“2. The Minister may make technical standards to:

(a) further specify the content of reports under paragraph 1; and

(b) specify the forms, templates and procedures to be used for such reporting.”;

(c) omit paragraph 3.

Amendment of Title III.

7.(1) For Article 10, substitute–

“A CSD must be authorised and supervised by the competent authority.”.

(2) Omit Articles 11 to 15.

(3) In Article 16, in paragraph 1, omit “of the Member State where it is established”.

(4) In Article 17–

(a) in paragraph 1, for “its” substitute “the”;

(b) in paragraph 3, for “additional information” substitute “the additional information that the competent authority reasonably considers necessary to enable it to determine the application, in the form or verified in the manner that the competent authority may direct”;

(c) omit paragraphs 4 to 7;

(d) in paragraph 9–

(i) in the first sub-paragraph, for “ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory” substitute “The Minister may make”;

(ii) omit the second and third sub-paragraphs;

(e) omit paragraph 10.

(5) In Article 18–

(a) for paragraph 2, substitute–

"2. Securities settlements systems governed by the law of Gibraltar may be operated only by authorised CSDs, the central bank or any other public bodies charged with or intervening in the management of public debt in Gibraltar acting as a CSD and third-country CSDs that are recognised in accordance with Article 25.";

(b) in paragraph 4–

(i) in the first sub-paragraph, for "ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify the criteria to be taken into account by the competent authorities" substitute "The Minister may make technical standards to specify the criteria to be taken into account by the competent authority";

(ii) omit the second and third sub-paragraphs.

(6) In Article 19–

(a) in paragraph 1, omit "of its home Member State";

(b) in paragraph 3–

(i) omit "established in the Union";

(ii) for "their respective competent authorities" substitute "the competent authority";

(iii) omit the second and third sentences;

(c) in paragraph 4, for "authorities" substitute "authority";

(d) in paragraph 5–

(i) for "CSDs' competent and relevant authorities" substitute "competent authority";

(ii) for "such authorities" substitute "the competent authority";

(e) in paragraph 6–

(i) omit "established and authorised in the Union";

(ii) omit "requesting";

(f) in paragraph 7–

(i) omit "of the requesting CSD";

(ii) for "that CSD" substitute "a CSD";

(iii) omit the final sentence.

(7) In Article 20–

(a) in paragraph 1–

(i) omit “of the home Member State”;

(ii) in point (d), for “Directive 2014/65/EU” substitute “the Financial Services (Investment Services) Regulations 2020”;

(b) omit paragraphs 2 and 3;

(c) in paragraph 5, after “another CSD” insert “or third-country CSD”.

(8) In Article 21–

(a) omit paragraphs 1 and 2;

(b) in paragraph 3–

(i) in the first sentence, in both places it appears, after “CSD” insert “or third-country CSD”;

(ii) for the second and third sentences, substitute–

“The register shall include CSD links. The competent authority shall make the register available on its website and keep it up to date.”.

(9) In Article 22–

(a) in paragraph 3, for “Directive 2014/59/EU” substitute “the Financial Services (Recovery and Resolution) Regulations 2020”;

(b) omit paragraphs 6 to 8;

(c) for paragraph 10, substitute–

“10. The Minister may make technical standards to specify:

(a) the information that the CSD is to provide to the competent authority for the purposes of the review and evaluation referred to in paragraph 1; and

(b) the forms, templates and procedures to be used for the provision of that information.”;

(d) omit paragraph 11.

(10) Omit Articles 23 and 24.

(11) In Article 25–

(a) in paragraph 1, for "within the territory of the Union" substitute "in Gibraltar";

(b) in paragraph 2, for "a Member State referred to in the second subparagraph of Article 49(1) or to set up a branch in a Member State shall be" substitute "Gibraltar or to set up a branch in Gibraltar is";

(c) in paragraph 3, omit "established and authorised in the Union";

(d) in paragraph 4–

(i) in both places it appears, for "ESMA" substitute "the competent authority";

(ii) in point (a), for "the Commission has adopted a decision" substitute "the Minister has made regulations";

(iii) for point (d), substitute–

"(d) where relevant, the third-country CSD takes the necessary measures to allow its users to comply with the law of Gibraltar and the adequacy of those measures has been confirmed by the competent authority.";

(e) for paragraph 5, substitute–

"5. When assessing whether the conditions referred to in paragraph 4 are met, the competent authority shall consult the responsible third-country authorities entrusted with the authorisation, supervision and oversight of the third-country CSD.";

(f) in paragraph 6–

(i) in the first sub-paragraph, for "ESMA" substitute "the competent authority";

(ii) in the second sub-paragraph–

(aa) in both places it appears, for "applicant CSD" substitute "applicant third-country CSD";

(bb) in the three places it appears, for "ESMA" substitute "the competent authority";

(iii) omit the third sub-paragraph;

(iv) in the fifth sub-paragraph, for "ESMA" substitute "the competent authority";

(v) after the fifth sub-paragraph, insert the following new sub-paragraphs–

"Recognition under this Article must be granted only for services listed in the Annex and the decision granting recognition must specify the services which the third-country CSD is recognised to provide or perform.

The applicant third-country CSD must, without undue delay, notify the competent authority of any material changes affecting the condition for recognition in point (b) of paragraph 4.";

(g) after paragraph 6, insert–

"6A. A third-country CSD recognised under paragraph 4 must, without undue delay, notify the competent authority of any material changes affecting the condition for recognition in point (b) of paragraph 4.";

(h) in paragraph 7–

(i) for the opening words, substitute–

"Where a third-country CSD recognised under paragraph 4 provides CSD services in Gibraltar, the competent authority may request the responsible third country authorities to:";

(ii) in point (a), for "those host Member States" substitute "Gibraltar";

(iii) in point (b)–

(aa) for "that host Member State" substitute "Gibraltar";

(bb) for "the host Member State" substitute "Gibraltar";

(i) in paragraph 8–

(i) in both places it appears, for "ESMA" substitute "The competent authority";

(ii) in both places it appears, for "that CSD" substitute "the third-country CSD";

(iii) for "the Union" substitute "Gibraltar";

(iv) at the end, insert the following new sub-paragraph–

“The competent authority may:

(a) limit the withdrawal to a particular service; and

(b) direct that the withdrawal is to have effect subject to such transitional arrangements as the competent authority considers necessary or expedient.”;

(j) in paragraph 9–

(i) for the first sub-paragraph substitute–

“9. The Minister may by regulations specify a third country which, in the Minister’s opinion:

(a) has legal and supervisory arrangements which ensure that third-country CSDs authorised there comply with legally binding requirements which are in effect equivalent to those laid down in this Regulation;

(b) subjects those third-country CSDs to effective supervision, oversight and enforcement in that third country on an ongoing basis; and

(c) has a legal framework which provides an effective equivalent system for the recognition of CSDs authorised under the law of Gibraltar and third-country CSDs authorised under other third country legal regimes.”;

(ii) in the second sub-paragraph, for “Commission” substitute “Minister”;

(k) in paragraph 10–

(i) in the opening words of the first sub-paragraph, for “In accordance with Article 33(1) of Regulation (EU) No 1095/2010, ESMA” substitute “The competent authority”;

(ii) in point (a)–

(aa) in both places it appears, for “ESMA” substitute “the competent authority”;

(bb) omit “, the competent authorities of the host Member State”;

(cc) for “CSDs” substitute “third-country CSDs”;

(iii) in point (b)–

(aa) for "ESMA" substitute "the competent authority";

(bb) for "CSD" substitute "third-country CSD";

(iv) in the second sub-paragraph–

(aa) for "Member State" substitute "public authority in Gibraltar";

(bb) for "Directive 95/46/EC" substitute "the data protection legislation";

(cc) omit "and where a cooperation agreement provides for transfers of personal data by ESMA, such transfers shall comply with the provisions of Regulation (EU) No 45/2001";

(l) in paragraph 11, for "the territory of the Union" substitute "Gibraltar";

(m) in paragraph 12–

(i) in the first sub-paragraph–

(aa) for "ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory" substitute "The Minister may make";

(bb) for "applicant CSD is to provide to ESMA" substitute "applicant third-country CSD is to provide to the competent authority";

(ii) omit the second and third sub-paragraphs.

(12) In Article 26–

(a) in paragraph 7, after "other CSDs" insert ", third-country CSDs";

(b) in paragraph 8–

(i) in the first sub-paragraph, for "ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory" substitute "The Minister may make";

(ii) omit the second and third sub-paragraphs.

(13) In Article 27–

(a) in paragraph 5, for "relevant national law" substitute "applicable law of Gibraltar";

(b) in paragraph 7, in point (b), in both places it occurs, for "its competent authority" substitute "the competent authority".

(14) In Article 28, in paragraph 5, for “competent authorities” substitute “the competent authority”.

(15) In Article 29–

(a) in paragraph 2–

(i) omit “and the relevant authorities”;

(ii) for “Union law or national law of its home Member State” substitute “the law of Gibraltar”;

(b) for paragraph 3, substitute–

“3. The Minister may make technical standards specifying:

(a) the details of the records referred to in paragraph 1 to be retained for the purpose of monitoring the compliance of CSDs with the provisions of this Regulation; and

(b) the format of those records.”;

(c) omit paragraph 4.

(16) In Article 30–

(a) in paragraph 1–

(i) in point (h), omit “and the relevant authorities”;

(ii) in point (i), for “the Union” substitute “Gibraltar”;

(b) in paragraph 3, omit “and the relevant authorities”;

(c) in paragraph 5, for “authorities” substitute “authority”.

(17) Omit Article 31.

(18) In Article 33–

(a) in paragraph 3–

(i) in the third sub-paragraph, for “That” substitute “The”;

(ii) omit the fourth sub-paragraph;

(b) for paragraph 5, substitute–

"5. The Minister may make technical standards specifying:

(a) the risks to be taken into account:

(i) by CSDs when carrying out a comprehensive risk assessment in accordance with paragraph 3; and

(ii) by competent authorities when assessing the reasons for any refusal under that paragraph;

(b) the elements of the procedure referred to in that paragraph; and

(c) the forms and templates to be used for the procedures referred to in that paragraph.";

(c) omit paragraph 6.

(19) In Article 34, in paragraph 8, for "Union" substitute "Gibraltar".

(20) In Article 37–

(a) in paragraph 2, after "other CSDs" insert ", third-country CSDs";

(b) in paragraph 4–

(i) in the first sub-paragraph, for "ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify" substitute "The Minister may make technical standards specifying";

(ii) omit the second and third sub-paragraphs.

(21) In Article 38, in paragraph 5, omit the second sub-paragraph.

(22) In Article 39–

(a) in paragraph 1–

(i) for "Member States" substitute "The competent authority";

(ii) for "referred to in point (a) of Article 2 of Directive 98/26/EC" substitute "in the Financial Services (Financial Markets and Insolvency: Settlement Finality) Regulations 2020";

(b) in paragraph 2, for "Articles 3 and 5 of Directive 98/26/EC" substitute "regulation 7 of the Financial Services (Financial Markets and Insolvency: Settlement Finality) Regulations 2020".

(23) In Article 41, omit paragraph 4.

(24) In Article 45–

(a) in paragraph 6–

(i) in the first sub-paragraph, for “competent and relevant authorities” substitute “the competent authority”;

(ii) in the second sub-paragraph, omit “and relevant authorities”;

(b) in paragraph 7–

(i) in the first sub-paragraph, for “ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory technical standards to specify” substitute “The Minister may make technical standards specifying”;

(ii) omit the second and third sub-paragraphs.

(25) In Article 46–

(a) for paragraph 1, substitute–

“1. A CSD must hold its financial assets at any one or more of the following kinds of institution:

(a) central banks;

(b) credit institutions with Part 7 permission to accept deposits;

(c) CSDs and third-country CSDs recognised by the competent authority;

(d) third-country financial institutions that are subject to and comply with asset protection and prudential rules considered by the competent authority to be at least as stringent as those laid down in the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020 and Regulation (EU) No 575/2013, and which the CSD assesses as having:

(i) robust accounting practices;

(ii) safekeeping procedures;

(iii) internal controls which ensure the full protection of those financial assets; and

(iv) low credit risk based upon an internal assessment by the CSD; or

(e) third-country CSDs which comply with asset protection rules considered by the competent authority to be at least as stringent as those laid down in this Regulation, and which the CSD assesses as having:

(i) robust accounting practices;

(ii) safekeeping procedures; and

(iii) internal controls which ensure the full protection of those financial assets.";

(b) in paragraph 5, for "authorised credit institution or authorised CSD" substitute "institution of a kind referred to in paragraphs 1(b) to 1(e)";

(c) in paragraph 6–

(i) in the first sub-paragraph, for "ESMA shall, in close cooperation with EBA and the members of the ESCB, develop draft regulatory" substitute "The Minister may make";

(ii) omit the second and third sub-paragraphs.

(26) In Article 47–

(a) in paragraph 3, in the first sub-paragraph, for "EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft regulatory" substitute "The Minister may make";

(b) omit the second and third sub-paragraphs.

(27) In Article 48–

(a) in paragraph 2–

(i) in both places it appears, omit "of the requesting CSD";

(ii) for "and relevant authorities" substitute "authority";

(b) in paragraph 5, after "another CSD" insert "or third-country CSD";

(c) in paragraph 7–

(i) after "Links between CSDs" insert "and between CSDs and third-country CSDs";

(ii) for "relevant and competent authorities" substitute "competent authority";

(d) in paragraph 9, for "By 18 September 2019 all interoperable links between CSDs operating in Member States" substitute "All interoperable links between CSDs and third-country CSDs operating in Gibraltar";

(e) in paragraph 10–

(i) in the first sub-paragraph, for "ESMA shall, in close cooperation with the members of the ESCB, develop draft regulatory" substitute "The Minister may make";

(ii) omit the second and third sub-paragraphs.

(28) Before Article 49, in the sub-heading to Section 1, after "CSDs" insert "or third-country CSDs".

(29) In Article 49–

(a) in the heading, for "authorised in the Union" substitute "or third-country CSD";

(b) for paragraph 1, substitute–

"1. A Gibraltar issuer shall have the right to arrange for its securities admitted to trading on regulated markets or MTFs or traded on trading venues to be recorded in any CSD or third-country CSD recognised by the competent authority.

1A. A third-country issuer shall have the right to arrange for its securities admitted to trading on regulated markets or MTFs or traded on trading venues to be recorded in any CSD.

1B. Without limiting the Gibraltar issuer's or third-country issuer's rights under paragraphs 1 and 1A, the corporate or similar law of the country or territory under which the securities are constituted shall continue to apply.

1C. The CSD or third-country CSD recognised by the competent authority may charge a reasonable commercial fee for the provision of its services to issuers on a cost-plus basis, unless otherwise agreed by both parties.";

(c) in paragraph 2–

(i) after "CSD" insert "or third-country CSD referred to in paragraphs 1 or 1A";

(ii) for "latter" substitute "CSD or third-country CSD";

(d) in paragraph 3–

(i) in both places it appears, after “CSD” insert “or third-country CSD referred to in paragraphs 1 or 1A”;

(ii) for “Member State” substitute “country or territory”;

(e) in paragraph 4–

(i) for the first sub-paragraph, substitute–

“Without prejudice to the law on the prevention of money laundering or terrorist or proliferation financing, where a CSD or third-country CSD referred to in paragraphs 1 or 1A refuses to provide services to an issuer, it shall provide the requesting issuer with full written reasons for its refusal.”;

(ii) in the second sub-paragraph, omit “of the CSD that refuses to provide its services”;

(iii) in the third sub-paragraph, omit “of that CSD”;

(iv) omit the fourth sub-paragraph;

(f) for paragraph 5, substitute–

“5. The Minister may make technical standards to:

(a) specify the risks to be taken into account by:

(i) CSDs when carrying out a comprehensive risk assessment in accordance with paragraphs 3; and

(ii) the competent authority when assessing the reasons for any refusal in accordance with paragraph 4;

(b) specify the elements of the procedure referred to in paragraph 4; and

(c) establish standard forms and templates for the procedure referred to in paragraph 4.”.

(g) omit paragraph 6.

(30) Before Article 50, in the sub-heading to Section 2, after “Access between CSDs” insert “and between CSDs and third-country CSDs”.

(31) In Article 50, for “A CSD shall have the right to become a participant of another CSD” substitute “A CSD or third-country CSD shall have the right to become a participant of a CSD”.

(32) In Article 51, in paragraph 1, for "Where a CSD requests another CSD" substitute "Where a CSD or third-country CSD requests a CSD".

(33) In Article 52–

(a) in paragraph 1, for "CSD submits a request for access to another CSD" substitute "CSD or third-country CSD submits a request for access to a CSD";

(b) in paragraph 2, omit the fifth sub-paragraph;

(c) for paragraph 3, substitute–

"3. The Minister may make technical standards specifying:

(a) the risks to be taken into account by:

(i) CSDs when carrying out a comprehensive risk assessment in accordance with paragraph 2; and

(ii) competent authorities when assessing the reasons for refusal under that paragraph;

(b) the elements of the procedure referred to in paragraph 2; and

(c) the forms and templates to be used for the procedures referred to in paragraphs 1 and 2.";

(d) omit paragraph 4.

(34) Before Article 53, in the sub-heading to Section 3, after "CSD" insert "or third-country CSD".

(35) In Article 53–

(a) in the heading, after "CSD" insert "or third-country CSD";

(b) in paragraph 1, for the first sub-paragraph substitute–

"A Gibraltar CCP and a Gibraltar trading venue shall provide transaction feeds on a non-discriminatory and transparent basis to a CSD or third-country CSD upon request by the CSD or third-country CSD and may charge a reasonable commercial fee for such transaction feeds to the CSD or third-country CSD on a cost-plus basis unless otherwise agreed by both parties.";

(c) in paragraph 3–

(i) in the second sub-paragraph, omit "of the party that has refused access";

(ii) in the third sub-paragraph, omit "of the receiving party and the relevant authority referred to in point (a) of Article 12(1)";

(iii) omit the fourth sub-paragraph;

(iv) in the fifth sub-paragraph, omit "responsible";

(d) for paragraph 4, substitute–

"4. The Minister may make technical standards to specifying:

(a) the risks to be taken into account by:

(i) CSDs when carrying out a comprehensive risk assessment in accordance with paragraph 3; and

(ii) the competent authority when assessing the reasons for refusal under that paragraph;

(b) the elements of the procedure referred to in paragraph 3; and

(c) the standard forms and templates for the procedure referred to in paragraphs 2 and 3.".

(e) omit paragraph 5.

Amendment of Title IV.

8.(1) In Article 54–

(a) in paragraph 2, in point (b) for "authorised in accordance with Article 8 of Directive 2013/36/EU" substitute "with Part 7 permission to accept deposits";

(b) in paragraph 3–

(i) in point (a), for "is authorised as a credit institution as provided for in Article 8 of Directive 2013/36/EU" substitute "has Part 7 permission to carry on any regulated activity which is carried on for the purposes of, or in connection with, such services";

(ii) in the final sub-paragraph, for "Directive 2013/36/EU" substitute "the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020";

(c) in paragraph 4, in point (a) for "is authorised as a credit institution as provided for in Article 8 of Directive 2013/36/EU" substitute "has Part 7 permission to accept deposits";

(d) in paragraph 5, in the second sub-paragraph, omit "and report its findings to ESMA";

(e) in paragraph 8–

(i) in the first sub-paragraph, for "EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft regulatory" substitute "The Minister may make";

(ii) omit the second and third sub-paragraphs.

(2) In Article 55–

(a) in paragraph 1, omit "of its home Member State";

(b) omit paragraphs 4, 5 and 6;

(c) in paragraph 7–

(i) in the first sub-paragraph, for "ESMA shall, in close cooperation with the members of the ESCB and EBA, develop draft implementing" substitute "The Minister may make";

(ii) omit the second and third sub-paragraphs;

(d) omit paragraph 8.

(3) In Article 56, omit "of its home Member State".

(4) In Article 57–

(a) in paragraph 1, omit "of the CSD's home Member State";

(b) omit paragraphs 2 and 3.

(5) In Article 58–

(a) omit paragraph 1;

(b) in paragraph 2, for "ESMA" substitute "The competent authority";

(c) omit paragraph 3.

(6) In Article 59–

(a) in paragraph 4, in point (h)–

(i) in both places it appears, omit "Union";

(ii) before "cash balances" insert "sterling";

(iii) for "central banks of issue" substitute "the central bank";

(b) in paragraph 5–

(i) in the first sub-paragraph, for "EBA shall, in close cooperation with ESMA and the members of the ESCB, develop draft regulatory" substitute "The Minister may make";

(ii) omit the second and third sub-paragraphs.

(7) In Article 60–

(a) for paragraph 1, substitute–

"1. Without limiting any of its powers under this Regulation, the competent authority is also responsible for the authorisation and supervision as credit institutions of the designated credit institutions and CSDs authorised under this Regulation to provide banking-type ancillary services.";

(b) in paragraph 2–

(i) omit the first and second sub-paragraphs;

(ii) in the third sub-paragraph, omit "of the CSD and to competent authorities referred to in paragraph 1";

(c) omit paragraph 3.

Amendment of Title V.

9.(1) For the heading to Title V, substitute "Infringements".

(2) For Article 61, substitute–

"Article 61

Administrative penalties and other measures

1. The competent authority may exercise the sanctioning powers in Part 11 of the Financial Services Act 2019 against any person who is responsible for an

infringement of [this Regulation] [any provision of Regulation specified in...] as if it were a contravention of a regulatory requirement within the meaning of that Part.

2. Any administrative penalty imposed under section 152 of the Financial Services Act 2019 for an infringement of [this Regulation] must be of an amount which does not exceed the higher of the following–

(a) where the amount of the benefit derived as a result of the contravention can be determined, twice the amount of that benefit;

(b) in the case of a legal person–

(i) the sterling equivalent of €20,000,000; or

(ii) 10% of the total annual turnover according to the last available annual accounts approved by its management body; or

(c) in the case of an individual, the sterling equivalent of €5,000,000.

3. Where a legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts, the relevant total turnover for the purpose of paragraph 2(b)(ii) is the total annual turnover (or the corresponding type of income) in accordance with the relevant accounting legislative acts, according to the last available consolidated annual accounts approved by the management body of the ultimate parent undertaking.

4. This Article applies without limiting any other powers of the competent authority under this Regulation.”.

(3) Omit Articles 62 to 64.

(4) In Article 65–

(a) for paragraph 1, substitute–

“1. The competent authority must establish effective mechanisms to encourage the reporting to the authority of potential or actual infringements of this Regulation.”;

(b) in paragraph 2, for “Directive 95/46/EC” substitute “the data protection legislation”;

(c) in paragraph 3, for “Member States” substitute “The competent authority”.

(5) For Article 66, substitute–

“Article 66
Appeals

Any appeal under this Regulation must be exercised in accordance with section 615 of the Financial Services Act 2019 and, where applicable, as if notice of the decision appealed against were contained in a decision notice within the meaning of that Act.

Amendment of Title VI.

10.(1) For the heading to Title VI, substitute “Regulations, Transitional and Final Provisions”.

(2) For Article 67 substitute–

“*Article 67*
Regulations

1. Any power to make regulations conferred on the Minister by this Regulation includes the power to:

(a) make any supplementary, incidental, consequential, transitional or saving provision which the Minister considers necessary or expedient; and

(b) make different provision for different purposes.”.

(3) Omit Articles 68 to 72.

(4) In Article 73–

(a) in the title, for “Directive 2014/65/EU” substitute “the law of Gibraltar on markets in financial instruments”;

(b) in the first sentence, for “Directive 2014/65/EU” substitute “the law of Gibraltar on markets in financial instruments”;

(c) in the second sentence, after “Articles 10 to 13” insert “as implemented by the law of Gibraltar on markets in financial instruments”.

(5) Omit Articles 74 and 75.

(6) In Article 76–

(a) omit paragraph 2;

(b) for paragraph 4, substitute–

"4. The settlement discipline measures in Article 6(1) to (4) and Article 7(1) to (13) apply from the date specified by the Minister by notice in the Gazette.";

(c) omit paragraph 5;

(d) in paragraph 6, for "the implementing act adopted by the Commission pursuant to Article 9(3)" substitute "any technical standards made by the Minister under Article 9(2)(b)";

(e) for paragraph 7, substitute–

"7. Article 17(1) to (3) and (8) apply from the earlier of:

(a) the date of entry into force of any technical standards made by the Minister under Article 17(9); or

(b) the date specified by the Minister by notice in the Gazette.".

(7) After Article 76, omit "This Regulation shall be binding in its entirety and directly applicable in all Member States.".

Amendment of the Annex.

11. In the Annex, in Section C–

(a) in point (a), for "Annex I to Directive 2013/36/EU" substitute "the Schedule to the Financial Services (Credit Institutions and Capital Requirements) Regulations 2020";

(b) in point (b), for "Annex I to Directive 2013/36/EU" substitute "that Schedule";

(c) in point (c), for "Annex I to Directive 2013/36/EU" substitute "that Schedule";

(d) in point (d), for "Annex I to Directive 2013/36/EU" substitute "that Schedule";

(e) in point (e), for "Annex I to Directive 2013/36/EU" substitute "that Schedule".

Dated: 16th February 2023

A J ISOLA
Minister with responsibility for Financial Services

EXPLANATORY MEMORANDUM

These Regulations address failures of retained EU law to operate effectively and other deficiencies arising from Gibraltar's withdrawal from the European Union. They amend Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (the "CSD Regulation").